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HOBSON V. HANSEN--WHAT IS LAW FOR.

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JUDGE JAMES SKELLY WRIGHT'S DECISION IN THE HOBSON V. HANSEN SCHOOL SEGREGATION CASE IN THE DISTRICT OF COLUMBIA IS EXAMINED IN SEVERAL SHORT ARTICLES. JUDGE WRIGHT HELD THAT THE 1954 SUPREME COURT SCHOOL DESEGREGATION DECREE EXTENDS TO DE FACTO AS WELL AS TO DE JURE SEGREGATION. HE RULED THAT SUBSTANDARD EDUCATION OF THE POOR IS DISCRIMINATORY, REGARDLESS OF RACE, AND ORDERED THE BUSING OF NEGROES TO PREDOMINATELY WHITE SCHOOLS, TEACHER INTEGRATION, AND THE ABOLITION OF THE TRACK SYSTEM IN THE SCHOOLS. HE ALSO NOTED THAT THE ANNUAL PER PUPIL EXPENDITURE IN NEGRO SCHOOLS IN WASHINGTON WAS $100 LESS THAN IN WHITE SCHOOLS. THUS APPLYING FOR THE FIRST TIME TO EDUCATION A BAR AGAINST ECONOMIC DISCRIMINATION. ALTHOUGH JUDGE WRIGHT CRITICIZED THE ABSENCE OF INTERDISTRICT SCHOOL SYSTEM COOPERATION AMONG THE DISTRICT AND THE MARYLAND AND VIRGINIA SUBURBS, HE DID NOT FIND FOR THE PLAINTIFF ON HIS REQUEST FOR METROPOLITANIZATION. INCLUDED IS A SUMMARY OF AND COMMENTARY ON THE BRIEF SUBMITTED BY THE SCHOOL SYSTEM, SOME PRESS OPINIONS, EXCERPTS FROM A LECTURE GIVEN BY THE JUDGE, AND A PROFILE OF HIM. COMMENTS ON THE DECISION BY THE GENERAL COUNSEL OF THE NAACP, BY A WASHINGTON ATTORNEY, AND BY A PROFESSOR OF PSYCHOLOGY ARE ALSO INCLUDED. THESE ARTICLES WERE PUBLISHED IN "THE CENTER FORUM," VOLUME 2, NUMBER 1, JULY 5, 1967. (NH)

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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The Center Forum

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Hobson v. Hansen — what is law for?

"It is regrettable, of course, that in deciding this case this court must act in an area so alien to its expertise. It would be far better indeed for these great social and political problems to be resolved in the political arena by other branches of government. But these are social and political problems which seem at times to defy such resolution. In such situations, under our system, the judiciary must bear a hand and accept its responsibility to assist in the solution where constitutional rights hang in the balance. So it was in Brown v. Board of Education, Bolling v. Sharpe, and Baker v. Carr. So it is in the South where federal courts are making brave attempts to implement the mandate of Brown. So it is here."

Thus Judge James Skelly Wright's parting words in the 182-page decision handed down last month maintaining that the Washington, D.C. schools have practiced 'criminal' discrimination against poor Negro children.

In his findings, his reasoning, his comprehensiveness, the remedies he called for, segments of the legal community feel Judge Wright has shaped one of the most crucial legal decisions affecting education ever made in the country. Some feel the opinion does more — that it defines the obligations of the community in regard to equality, and by doing so will force an acceptance of those obligations in the political arena where they must be, but have never been, made. Some feel Judge Wright's opinion assumed more authority than the law grants him.

Last week came the first formal response to the opinion with the announcement that Dr. Carl Hansen, the superintendent of schools in Washington, had resigned. (The District Board of Education named a Negro as acting superintendent, the first Negro to hold the post.) If the Wright opinion is in any way influential in reshaping urban school systems, observers feel, the resignation may be the first of many across the country. As the *Washington Post* observed in an editorial last Wednesday: "Dr. Hansen...honorably served nine years in the most difficult job in...Washington. He leaves...because he cannot turn himself into another kind of man to run another kind of school system." Judge Wright himself noted:

> Whatever the law was once, it is a testament to our maturing concept of equality that, with the help of Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.

In two aspects important to most urban populations, Judge Wright's ruling went beyond the basic Supreme Court decree in 1954 forbidding school segregation. First, it extended the desegregation doctrine of the Court to include de facto (resulting from unintentional administrative practices) segregation. The 1954 ruling forbade only de jure segregation — segregation sanctioned by law.

Secondly, Judge Wright introduced a new prohibition against substandard and therefore discriminatory education of the poor, regardless of race.

He found that in predominantly Negro schools in Washington the annual median per-pupil expenditure was a flat $100 below predominantly white schools ($392 to $292).

A bar against discrimination by economic status in the selection of juries has been upheld by the U.S. Court of Appeals for the Fifth Circuit. Judge Wright was the first to apply it to education. Other federal courts have divided on challenges to the constitutionality of neighborhood segregation based on dwelling patterns. But no case has involved a metropolitan school system as large as Washington's, and as preponderately Negro. Nor has the issue ever reached the Supreme Court.

Julius Hobson, an economist with the Social Security Administration and a militant civil rights leader, took his daughter out of Washington's public schools a couple of years ago and sent her to a boarding school in Virginia. Involved in both national and local civil rights groups, he brought suit against the school system as an individual. His primary aim was to put an end to the track system, although his lawyers went as far as asking that the schools in Washington be put in receivership to the U.S. Commissioner of Education as a preface to metropolitanizing the school systems in the District and the surrounding suburbs. Hobson maintained that Negro children in Washington had to attend schools that were segregated and inferior, that the school's track system extended segregation and froze children in categories from which it is almost impossible to be reassigned as a result of the manner and infrequency of testing, that the schools maintained teacher segregation, that Negro schools were staffed by less experienced faculties, pupil-teacher ratios were higher and less money was spent there per pupil than on white children and those from higher socioeconomic groupings, and that optional pupil transfer zones had been used in a calculated way as a scapegrace for white students who didn't want to attend schools with poor Negroes.

Judge Wright's findings gave Hobson most of what he asked for.

Because it believes Judge Wright's opinion in the Hobson case is of major significance, the Forum has given over most of the issue to this one subject. On the pages that follow there is an attempt to show some of the factors that shaped the ruling, several comments on the ruling's implications for urban education, and a commentary on the legal argument the Washington school system offered in its defense. This time, our special thanks to Morton Inger for the time, knowledge, and understanding he contributed.

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One exception was the request for metropolitanization. In ordering greater attempts to integrate the schools, Judge Wright specifically said the Court has no authority to create an area-wide school system that would include the District and the Maryland and Virginia suburbs. [See Cline comment, p. 6] But he sharply criticized Washington school officials for failing to explore the possibility of voluntary cooperation between the city and the suburbs.

"There is no reason to conclude that all Washingtonians who make their homes in Virginia and Maryland accept the heresy that segregated public education is socially realistic and furthers the attainment of the goals of a democratic society," Judge Wright declared. "Certainly, if the jurisdictions comprising the Washington metropolitan area can cooperate in the establishment of a metropolitan transit authority (created last year) the possibility of such cooperation in the field of education should not be denied — at least not without sounding the pertinent moral and social responsibilities of the parties concerned."

Another one of Hobson's contentions the decision did not accept was the charge that school officials deliberately deprived Negro schools of adequate supplies such as text-

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books and facilities such as libraries. The decision, however, emphasized that the inequalities are unconstitutional regardless of how they arise. [The Coleman report, it is worth remembering, held that even when the facilities in Negro schools were equal or superior to white schools Negro students still weren't doing well. Coleman maintained facilities have less to do with achievement than peer group relationships.]

The judge ordered remedies to take effect this fall. These include the busing to predominantly white schools of children in Negro neighborhoods who wish to attend integrated classrooms, the mandatory redistribution of teachers to integrate all school faculties, and the abolition of the controversial track system of assigning pupils to classes according to ability.

Judge Wright's ruling, as the New York *Times* wrote in an editorial, is a "monumental exercise in sociological jurisprudence." It is clearly in line with his past decisions involving education. [See Profile, p. 5] But there has been little inclination in some quarters, notably the press, to see Judge Wright's ruling in the Hobson case as part of a body of work, with a consistent logic, and a particular vision of the American experience — indeed, as anything but a badly-conceived error.

Thus the *Times*, which had praise for one part of the ruling, also stated that "the practicality of the decision in its larger implications is highly questionable . . . Desirable as integrated education is, experience suggests that white parents in any part of the country will not willingly accept long-distance busing. Moreover, unless the neighborhood is integrated and the racial balance in the neighborhood school is carefully controlled, integration hasn't proved in reality to be attainable."

A day later Joseph Alsop described the Wright ruling in his syndicated column in an "acre-size addition to the pavement of hell" (after Sam Johnson's rule that hell's pavement is composed of good intentions). Pointing out that Washington's schools are 90 per cent Negro, he said "talking about desegregation as a remedy is not merely self-deluding. It is in fact near criminal, for the offer of a false remedy deludes the whole community."

A day after that, the *Washington Post*'s local columnist, William Raspberry, pointed out that integration of 8 or 9 per cent white students into an overwhelmingly black student population is both technically unfeasible and practically worthless. Both Raspberry and Alsop argued that far from integration the immediate need was for compensatory education. It was an argument echoed in many editorials.

But Judge Wright recognized these problems. First of all he knew that whites "will not willingly accept busing." In ordering busing, he made clear that only Negroes would be bused. The white students "will remain in the schools in their neighborhood." Secondly he called attention to the need for compensatory programs (see Rein comment, p. 5). Most importantly, Judge Wright indicated how well he was aware of the near impossibility of the school system's situation in Washington. But as he pointed out in his parting words, there is a large social and political issue to be decided and it is not being decided in the social and political arenas that were created for the purpose. In effect, Judge Wright by his decision is forcing the issue out into those arenas. (Asked about Judge Wright's suggestion that the Washington schools talk to the suburbs about school merger, Arlington County School Board President James Stockard said: "I can see merits to working out some possible arrangements, but I don't think it would be politically feasible.")

It seems clear too that Judge Wright recognized, as his critics contended, that he was on shaky legal and constitutional ground by ruling against de facto segregation. Certainly there is nothing explicit in the Constitution to support his position. That may be one reason he had to write 182 pages and why he had to turn to so many sociological sources.

In any case, Judge Wright seems to be saying in this ruling that there are moments in history when the courts must assist in solving the social issues of the community. There is no doubt that in such instances the court carries with it the danger of being ahead of its time, and of creating more harm than it prevents. There are some issues, as Judge Wright's serious and well-meaning critics point out, that must have time to fester and boil and cool and come together, and bubble and strain before they are amenable to solution. But Judge Wright believes the process can be helped along, and this is how he appears to have intended his ruling in the Hobson case.

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A Legal Argument

The legal brief the Washington school system submitted to the court in its defense was less interesting for the law it argued than for what it revealed about the attitude of school officials. It was as though the social and political developments of the last 20 years had not occurred. The following is a summary and commentary on the brief:

The school system's basic legal argument was that the plaintiffs had no standing to sue because they offered no proof that they had been harmed by the school system; that the court was without jurisdiction to interfere with the board's and the superintendent's exercise of their discretion in the choice of educational methods; and that being compelled to attend the school in the district in which they live did not constitute a violation of the plaintiff's constitutional rights.

In regard to the principal charges made by the plaintiffs, the system argued as follows:

1. Hobson contended that the District of Columbia track system discriminates against Negroes by placing them in the lowest tracks. The school system answered that there are "many" Negroes in the highest track at the elementary level. The system claimed that in 1965 only 2.7 per cent of the elementary school pupils were in the special academic curriculum (the lowest track) and another 1.5 per cent were in the honors curriculum (the highest track), with the remaining 95.8 per cent in the middle track. "It is inconceivable in the light of these statistics," the system contended, "that the claim of discrimination can seriously be made." Furthermore, it argued, the classification in a track is only temporary, and principals make a twice yearly review of the academic records of each child.

2. Hobson asserted that the school system had failed to utilize federal funds to further the education of Negro pupils. "This allegation is absurd," replied the school system. Most of the federal funds it receives are specifically designed and earmarked for use on behalf of low-income children. The system pointed out that in the District of Columbia

low-income children happen mostly to be Negro, therefore the funds are used in behalf of Negro children. In regard to the charge that the school system fails to request sufficient funds, it replied that the budgets it submits to the commissioners of the District of Columbia are invariably pruned. Thus, the school system never gets as much as it asks for.

3. Hobson complained that the school system failed to shift experienced, permanent-tenured teachers to the all-Negro schools. The system frankly conceded that no teacher with longevity, whether tenure or nontenure, is required to transfer from one school to another under pain of dismissal. Requests for transfer are honored where possible. The system pointed out that teachers will leave (and have ample opportunity to do so) if transferred to schools where they do not want to teach. Teachers will not stay, the defendant claimed, "if they are shunted around the system merely to provide an arbitrary numerical racial balance which, however meritorious, cannot in the context of the problem be deemed an overriding educational consideration." Besides, the brief noted, over 75 per cent of the teachers are Negro.

4. Hobson charged that the system maintained "optional zones" which permitted whites residing within such areas to avoid the necessity of attending a predominantly Negro school. The system's answer (in effect conceding the point) was that the optional zones are not always designed to help whites escape a Negro school. It claimed that one such zone—Western-Dunbar—was created to provide an integrated school environment for those who wished it. But it also admitted that another zone, involving Roosevelt and Western High Schools, was established after the Brown case and was designed "as a safety valve to relieve social tension during the initial period of desegregation." In other words, to let whites out.

5. Hobson charged that the educational policies and practices of the school system caused Negro pupils to have low test scores. The school system replied that pupils are held back by parents and other factors in their environment plus individual deficiencies in capacity, health, and aspirations. However, the system weakened its argument here when it tried to show why upper-middle-class whites do better in school: "Naturally, the pupil who has traveled, seen more than the mere confines of his immediate neighborhood, is acquainted with the geography different from his own, and is favored by empirical contact with many things comes more prepared for the beginnings of formal education . . ." (Emphasis added.)

As can be seen, four of the five answers to Hobson's principal complaints can be called (more or less) factual. The fifth reveals the school system's attitude toward Negro pupils and toward its responsibility for "reaching" these pupils. But even in the factual answers, the thinking underlying the answers is surprisingly traditional in this time of sophisticated argument over integration and education. Underlying all of the Washington school system's arguments was the belief that integration is not an overriding educational need. The school system saw integration as nothing more than social engineering.

A basic question presented in this lawsuit is whether due pro-

The following, reprinted from the New York Law Journal of Feb. 18, 1965, was excerpted from the sixth annual James Madison Lecture at the New York University School of Law in which Judge J. Skelly Wright predicted that the United States Supreme Court would not allow local political lines—such as city or county boundaries—to be used to block integration of the nation's school systems. Respondents in Hobson vs. Hansen, charging he had prejudiced himself in this lecture, asked Judge Wright to disqualify himself from the case. He refused.

To counter the "flight to the suburbs" of middle-class whites Judge Wright predicted that whenever the Supreme Court tackled this problem, it would remit the remedy to the district courts, with instructions to ignore local boundaries.

Judge Wright, after noting two cases involving Gary and Kansas City schools, in which the lower federal courts found themselves powerless to act to relieve de facto segregation caused by housing and economic patterns as well as political gerrymandering, Judge Wright said:

"Although in the Gary and Kansas City cases both concluded that the federal courts were powerless with respect to de facto segregation, the issue is far from closed. The final word on this subject will, of course, be spoken by the Supreme Court.

"It is inconceivable that the Supreme Court will long sit idly by watching Negro children crowded into inferior slum schools while the white flee to the suburbs to place their children in vastly superior, predominantly white schools.

"Then he added:

"Before the Supreme Court acts, some other federal courts no doubt will take a further look at de facto segregation and will be less inclined to accept the suggestion that the state and its agencies are not, in some degree at least, responsible for it and helpless to correct it. Until now the cases have focused on the responsibility of the school boards administering the segregated schools, and it is clear that these agencies, through historical gerrymandering and other devices, means have contributed to racial imbalance in the schools. But state action contributing to segregated schools is not limited to school boards. And the Fourteenth Amendment speaks to the state itself. As Mr. Justice Brandeis reminds us, 'It is a question of the power of state as a whole.' * * * the powers of the several state officials must be treated as if merged in a single officer.

"Where state policy expressed by its several agencies binds itself to, and leads toward, segregated schools, the responsibility of the state is plain. For example, where state policy with reference to housing, or state encouragement of private racial covenants in housing, lead to residential segregation and the school board uses the neighborhood plan in making pupil assignments, the school segregation that results is clearly the responsibility of the state. Certainly the state will not be allowed to do by two steps what it may not do in one. By taking a broader look at state policy and all contributing state agencies, federal courts may be more successful in finding state complicity in segregation.

"The touchstone in determining equal protection of the law in public education is equal

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A basic question presented in this lawsuit is whether due process of law compels defendants to intermingle, on a racial or socio-economic basis, students in the public schools of the District of Columbia when the only educational advantage afforded the infant plaintiffs thereby may be social and not academic. The law compels answer in the negative.

After first denying that tracking had much effect, the system defended tracking with a traditional argument against heterogeneous grouping; the teacher of a heterogeneous class has one of three choices —she can teach to the gifted or the slow or down the middle range, but whichever choice she makes, she necessarily ignores the others, and the ignored child "does not long

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"The touchstone in determining equal protection of the law in public education is equal educational opportunity, not race. * * * In short, since segregation in public schools and unequal educational opportunity are two sides of the same coin, the state, in order to provide equal educational opportunity, has the affirmative constitutional obligation to eliminate segregation, however it arises."

Among the remedies available to the state, Judge Wright said, are the following: educational parks, redrawing of district lines, the "Princeton Plan," by which all children from, for example, kindergarten to third grade attend one school and all children from the fourth to sixth grades attend another one; and the building of new schools near the dividing line between Negro and white residential areas.

"An even more difficult problem is presented by the flight of the white population to the suburbs," Judge Wright continued. "The pattern is the same all over the country. The Negro child remains within the political boundaries of the city and attends the segregated slum school in his neighborhood, while the white children attend the vastly superior white public schools in the suburbs * * *.

"While a court * * * may find no great difficulty in ordering the local school authorities to use the Princeton Plan or * * * in ordering the local taxing authority or the state to levy taxes to raise funds to build an educational park, relieving the inequality between the suburban public school and the segregated city slum public school presents a greater challenge.

"Obviously, court orders running to local officials will not reach the suburbs. Nevertheless, when political lines, rather than school district lines, shield the inequality, as shown in the reapportionment cases, courts are not helpless to act. The political thicket, having been pierced to protect the vote, can likewise be pierced to protect the education of children."

survive." In its next sentence, the brief ran directly counter to the principal finding of the Coleman report. "A pupil at school," it argued, "progresses academically primarily by virtue of the effort of the teacher in the classroom and not from the associations he may establish with his fellow pupils." This argument ran counter also to the system's own argument that Negro pupils are held back primarily because of their family backgrounds and associations.

On the question of school construction, the brief was naive to the point almost of wonder. In support of its contention that the school system does not discriminate, it proudly pointed out that no new school construction had taken place since 1953 in the area where the white students live and that each new school had been constructed in areas that were predominantly Negro. This is no doubt true, but school board members throughout the North know that such a procedure is one of the most effective ways of *maintaining* the color line in the school system. It seems odd that the superintendent would boast of this. These examples are typical of the thinking behind the school system's brief.

The system also made a traditional argument in favor of the neighborhood school "concept." Among the features of the neighborhood school that the defendant claimed recommended its use, the brief listed the following: proximity to the pupil's residence; identification with the institutions and activities of the neighborhood; the fostering of family support of school activities; the fostering of an *esprit de corps* and sense of identification among the pupils; the avoidance of the necessity and cost of transportation; and the creation of closeness among the pupils, parents, and teachers. But if the school officials truly believe that the Negro pupils are held back because of their bad family backgrounds and environment, it seems contradictory for them to argue for a concept that heightens the pupils' identification with this unwholesome environment.

The school system concluded its brief with a warning of the dire consequences that would result from using busing to achieve desegregation.

> Even the most inflamed advocate for artificial balance of the races ... should recognize that busing children from their neighborhood in order to achieve an arbitrary percentage of racial mix contains the seeds of many serious educational problems... (A) sense of not belonging... (An) artificial society.... The sense of defeat and isolation... Transportation of children from their neighborhood invites indifference on the part of the family.... Therefore, it becomes apparent that transportation to achieve a racial mixture... is likely to open a Pandora's box of additional social and academic difficulties...

In sum, then, the District of Columbia school system made the following argument: (1) the Negro child does poorly in school because of his unwholesome family and social environment; (2) a pupil "progresses academically primarily by virtue of the effort of the teacher in the classroom"; (3) the school system cannot force experienced teachers to teach in the Negro schools; (4) the neighborhood school is best for the Negro pupil because it strengthens his ties with his neighborhood (which is unwholesome) and creates closeness among the pupils (who are unprepared for school because they have seen only the narrow confines of their immediate neighborhood), between pupils and parents (who lack the formal educational attainments and cannot provide the active discipline at home that favors good school performance), and between pupils and teachers (who would prefer to escape from the Negro schools); (5) therefore, it would be disastrous to the educational and emotional welfare of the Negro child to uproot him from his immediate neighborhood and bus him to another school where he would have a better intellectual and social environment.

Mossou Jager

A PROFILE: Judge J. Skelly Wright

OF ALL the federal judges before whom the *Hobson* case could have been brought, Judge J. Skelly Wright, of the United States Court of Appeals for the District of Columbia Circuit, was, in the light of his past decisions, perhaps the one most likely to look with favor upon the plaintiff's case. Although it was partly chance that put Judge Wright in the position of hearing this case, it was his strong stand in favor of school integration in New Orleans that actually put him in Washington. Because of this stand, Judge Wright had been subjected to vilifications and threats; consequently President Kennedy promoted him to the Appeals Court and into the more hospitable environment of Washington, D.C.

Born, bred, and educated in New Orleans, the 56-year-old jurist was a highly respected and widely known figure in local affairs. There was little in his background or attitudes that would have led any of his acquaintances to believe he would become one of the pivotal figures in ending the segregated school system in the Deep South. While some Southern-born and bred federal judges have grudgingly acknowledged the superior demands of the law of the land but have moved as slowly as possible and permitted the maximum of delay, Judge Wright consistently has moved with astonishing speed. New Orleans moderates were absolutely stunned by his integra-

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A brief look at the New Orleans controversy will reveal Judge Wright's boldness. The suit to end school segregation in New Orleans was filed by the NAACP in the United States District Court in September 1952. In keeping with the strategy of the national office of the NAACP, the case lay dormant until the Supreme Court's decision in the *Brown* case. But even after the *Brown* decision, the NAACP was slow in pushing the suit. In 1956, Judge Wright ordered the school board to come up with a plan "with all deliberate speed." But the NAACP put little or no pressure on the school board, and it was not until 1959 that the federal court was able to give the school board a deadline – May 1960. And when the school board appeared in his court in May 1960, to say that it had no desegregation plan, Judge Wright presented the board members with a plan of his own and ordered the school board to put it into effect in the fall of 1960. This was the first court-ordered school desegregation in the Deep South.

The reluctant board members – all of whom were segregationist and one of whom was one of the organizers of the New Orleans White Citizens Council – had done, and continued to do very little to prepare for desegregation. They were waiting for Governor Jimmie Davis (the composer of "You Are My Sunshine") to save them from having to integrate the schools. Throughout the summer, the school board filed appeal after appeal of Judge Wright's orders, but the higher courts consistently upheld him. Judge Wright was so steadfast that

the board members finally began to realize integration was perhaps inevitable, and they began to seek community support for token integration. When it appeared that the board was really going to integrate, Judge Wright granted it a delay until November 14.

Governor Davis swung into action. Five times the Governor or the legislature attempted to seize the New Orleans schools from the school board and strip the board members of their powers. Each time, Judge Wright backed the board with restraining orders and injunctions against the Governor and the legislators. One of his orders restrained 775 state and local officials. Five times the legislature fired the superintendent of the New Orleans schools and the school board attorney, and each time the two men were put back into office by Judge Wright within a day.

On Sunday, November 13, 1960, the day before the New Orleans schools were to be desegregated, a special session of the legislature passed two resolutions having the effect of law which were shrewdly designed to prevent Judge Wright from being able to stop them. Since Wright was enjoining everything the Governor did, the legislators sought to circumvent the Judge by placing the entire legislature in direct charge of the New Orleans schools, with power to hire and fire and handle the school's finances. Having put themselves in charge, the legislators proceeded to fire the superintendent and the school board attorney once again. But Judge Wright was watching this special session on his television set. Forty-five minutes after the session was over, he signed papers enjoining the entire legislature and Governor Davis from acting against the New Orleans school board. There was no legal precedent for enjoining an entire legislature. On Monday, having been frustrated by Judge Wright from attempting to take over the schools, the legislature voted to remove the four moderate segregationist board members from office. But by the time school opened the next morning, Judge Wright had issued sweeping orders putting the school board back in business.

For a long time Judge Wright received very little support from the U.S. Justice Department. President Eisenhower was known to be holding back for fear of hurting Nixon's chances of capturing the state from John Kennedy. (Kennedy won the state anyway.) After the presidential election, the green light was given to the U.S. Attorney. We now take for granted that the U.S. Justice Department is actively involved in Southern school desegregation suits. But in the instance of New Orleans, the department did not enter the case until after the crisis was fully developed.

The school board was reluctant; the NAACP exerted little pressure; the Justice Department was too slow; there was fierce opposition by the public, the state legislature, and the governor; and there was no support at all from the civic and political leaders in the city. What little moderate support there was arose late and timidly. It would have been easy for the federal judge

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Judge Wright indicates that what the Constitution requires at a minimum is material equality. This concept is not new. It stems from the old "separate but equal" doctrine of *Plessy v. Ferguson*, which the U.S. Supreme Court overturned in *Brown v. Board of Education*. *Brown* held that segregated facilities were per se unequal, but it failed to hold that equality in allocation of resources as between Negro and white children was no longer a part of the Constitution's concept of equal educational opportunity.

In 1958, Judge Justine Polier of the New York Family Court *In re Skipwith* dismissed the prosecution against a group of Negro parents in Manhattan, brought for refusing to send their children to de facto segregated schools in Harlem. Judge Polier held that public school authorities could not invoke the compulsory school attendance law without first having met their constitutional obligations of providing equality of educational opportunities for Negro children. Finding unconstitutional discrimination against Negro children in respect to the gross disparity in quality of teachers assigned to the schools in Harlem as compared to those of other schools, she ruled that the Negro parents could not be punished for refusing to send their children to unequal and inferior schools.

Dr. James Allen, New York Commissioner of Education, has accepted the idea that de facto school segregation is unacceptable, and has announced that the primary objective of modern public education must be to bring quality to the ghetto schools. Hence, Judge Wright's views on these issues will be merely supportive of a commitment already made, but in its application the *Hobson v. Hansen* thesis, so far as New York is concerned, will help to give more effective implementation to the state's commitment.

Judge Wright was dealing with a federal island surrounded by states. Therefore, relief had to be limited to the federal area. However, no such limitations need restrict a court when dealing with a school district within a state.

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The school board was reluctant; the NAACP exerted little pressure; the Justice Department was too slow; there was fierce opposition by the public, the state legislature, and the governor; and there was no support at all from the civic and political leaders in the city. What little moderate support there was arose late and timidly. It would have been easy for the federal judge—a local man—to give in to the pressures. There were, after all, no pressures for desegregation. Yet the schools *were* desegregated in New Orleans, and it was done when the judge ordered them to be. One man desegregated the New Orleans schools—Judge J. Skelly Wright. At almost every step he created precedents that were then followed in school desegregation suits throughout the rest of the South.

Marion Inger

Mr. Inger is on the Crisis staff. He holds a J.D. from the University of Chicago and is completing a book on integration in New Orleans.

Comment

In the articles that follow, Robert Carter, general counsel for the NAACP, comments on the implications of the opinion for New York; David Rein, a Washington attorney, points out the limitations of the court in this area; and, Marvin Cline, professor of psychology at Howard University, examines Judge Wright's references to regional planning.

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In New York State, school districts with the highest per capita expenditure spent seven times more than the school districts with the lowest per capita expenditure. The state formula for supplementing local funds does not wipe out the disparities in local resources available among various school districts. This formula, therefore, may be unconstitutional, and the state may be compelled to devise a formula which will make certain that the Negro poor in the urban centers receive the same per capita expenditure for education that is spent for that of white affluent suburbanites—and, indeed, that inequality in the allocation of all educational resources as between affluent suburban and poor city schools be corrected.

Moreover, it may be that school district lines can be pierced to correct this educational deprivation as well. For example, although New York City schools now have a majority of Negro and Puerto Rican students, it is possible that we need not look only within the confines of New York City in our effort to cor-

rect that imbalance and to provide Negro and Puerto Rican children with equal educational opportunities. In short, *Hobson v. Hansen* suggests that district lines can no longer be regarded as insurmountable barriers preventing the Negro poor from receiving the equal educational opportunities as commanded by the 14th Amendment."

Robert L. Carter

"Mr. Carter's office was preparing a case to test this thesis even before the Wright ruling. It involves an economically poor school district in upstate New York that is surrounded by affluent school districts. The NAACP will either bring suit or ask that Commissioner Allen take action later this year.

How effective will Judge Wright's remedies be in the District of Columbia where the school population is already 99 per cent Negro and where the white students (or their parents on their behalf), despite the abolition of the optional zones, still have the escape valve of either moving to the suburbs in Maryland and Virginia or sending their children to private schools? Without some intervention by the U. S. government it is doubtful whether Judge Wright or any other court can bring about integrated schools in the District.

In any case, Judge Wright's opinion — which demonstrates that under the Constitution a school system has the responsibility to provide an integrated education regardless of the causes that have created segregated schools — is the opinion of only one judge in the federal system and as such is binding only on the District. If no appeal is taken, as now seems the case, the legal principles involved will not be affirmed by a higher court. Of course, other cases can be brought in other jurisdictions, in which other federal district courts are urged to follow the precedent set by Judge Wright. Because of the tremendous persuasiveness and scholarship of the opinion, it may well find followers not by virtue of its authority but by virtue of its logic and reasoning.

However, even additional decisions following the principles of Judge Wright and an eventual decision of the Supreme Court upholding his reasoning will not be adequate to meet the problem. As Judge Wisdom of the Fifth Circuit, which covers most of the Deep South, noted in a recent decision, the courts alone cannot bring about integrated schools which give equal educational opportunity to all citizens. The courts can at most lay down the principles to be followed. They cannot in fact run the schools. "A national effort," Judge Wisdom wrote, "bringing together Congress, the executive and the judiciary may be able to make meaningful the right of Negro children to equal educational opportunity. The courts acting alone have failed."

Judge Wright, too, appreciated this dilemma. He emphasized that the specific remedies decreed, although inadequate, were required because the school system itself did not recognize that a problem existed, and so was unwilling to come forth with any suggestions. But, Judge Wright also ordered the school system to consider the advisability of establishing educational parks or other facilities which would be administered on a regional or metropolitan basis, and to come up with "a plan of compensatory education sufficient at least to overcome the detriment of segregation."

David Rein

In ordering busing, integration of the faculty, consideration of Princeton planning, etc., Judge Wright assumes that the District is like other large urban centers, i.e., that it has the capability of resolving the problem of de facto segregation. In this sense his decision is clearly aimed at the other metropolitan regions.

But the District is not like the other centers in two very important respects. First, of the total public school enrollment, 99 per cent of the children is Negro. Second, the District of Columbia (which is coextensive with the city of Washington) functions as a state, so that its suburbs are located entirely in other states.

Judge Wright can order integration in the District, but he has no power over Maryland or Virginia in this case. Given the Negro-white ratio in the District, the best the Judge can order is a degree of tokenism that even he found unacceptable in New Orleans. Further, approximately half the white D. C. residents of school age are enrolled in private schools. The parents of the remaining white children are both affluent enough and motivationally inclined to increase that per cent significantly if they are required to do anything more than accept a few Negro children in "their" schools.

The Judge is, of course, aware of these facts, so we can assume that his decision will have much greater short term effects in other cities around the nation than in D. C. But the District is the one city in the nation that cannot integrate without intensive cooperation with its suburbs. In the long run, educational solutions can only be found in the same manner that housing, employment, air/water pollution, transportation and fiscal solutions can be found: through regional planning.

By ordering integration, Judge Wright is ordering the District to enter the twentieth century at last. No matter that he has no power over the suburbs. The Judge can require the District to find the means of entering into negotiations with the suburbs. He has already held out the carrot, in lieu of his nonexistent stick, by suggesting to the District that if they can persuade the suburbs to join in an educational regional authority in order to construct educational parks serving children on both sides of the District line, he would be willing to forego the requirement to bus Negro children to white schools within the District.

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It seems to me that the Judge has forced the District to focus on the most pressing political problem of the decade: the destruction of the artificial political and social separation of the city and its metropolitan region. This is the problem the District, along with most other urban centers, has been avoiding. There can be no doubt that this is also the most difficult problem to solve, but by forcing the city to assume its obligation, Judge Wright has thrown the issue back to the political arena, while maintaining his veto over token solutions all of the time.

It will be fascinating to see how he handles the arguments over the plans submitted by the board next October. At this writing, a majority of the D. C. Board of Education appears to be opposed to an appeal of the decision, and so they might very well be poised to jump with both feet into constructive long-range as well as short-range planning.

M. G. Cline

Professor Cline was a witness for the plaintiff in the Hobson case.

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